

27 June 2022

Final report by the Complaints Commissioner**Complaint number FCA001584***The complaint*

1. On 19 January 2022 you asked me to investigate a complaint about the FCA. My preliminary report was issued on 22 April 2022.
2. In my preliminary report I outlined that I felt the FCA had failed to address an element of your complaint. In response to my preliminary report the FCA took the opportunity to investigate and address the missed element of your complaint and issued a further decision letter to you on 1 June 2022 (**June Decision Letter**).
3. You provided your comments to the FCA in response to its further decision letter on 13 June 2022 and copied my office in.

What the complaint is about

4. The FCA summarised your complaint as follows in its decision letter dated 29 December 2021 (**December Decision Letter**):

Part One

You informed us you were contacted by the FCA on 28 January 2021 in your capacity as the approved person of Firm X. You are unhappy that you were advised to apply to cancel your FCA authorisation by submitting a cancellation form. You were told this was because Firm X was 'no longer carrying out regulated business and this had been demonstrated through discussions that the FCA has had with the firm.' You challenged the FCA representative's assessment of the situation.

You disagreed that your business had not conducted a regulated activity over a specified period. You said you provided cogent reasons

to explain the situation and were unhappy that the FCA representatives you liaised with believed your business 'posed a threat to consumers.'

Part Two

A representative from the FCA Enforcement team contacted you on 8 March 2021 to request further information regarding the potential cancellation of your firm's permissions. You said you provided this information, however, you were dissatisfied with the responses you received, which in the context of the deadlines you were given for your own responses you considered to be 'tardy and he invariably failed to comment on any of the points I raised in respect of the information he had previously requested.'

You felt the FCA representative failed to respond to you directly and adopted a single-minded to approach in requesting you to either voluntarily cancel your firm's permissions or accept cancellation by the FCA and publication thereof. You found this attitude unhelpful.

Remedy

You believe financial compensation would be justified under the circumstances, however, you said you were not aware how this would be calculated.

5. In an extension to Part Two of its investigation the FCA in its June Decision Letter set out the further following aspect to your complaint which it acknowledged it had missed in its December Decision Letter.

On 8 October 2021, you responded to our Scope letter, mentioning that:

'I do not have anything further to add other than to reiterate that the FCA's enforcement team, under [Case Officer X], were unhelpful in failing to respond to any of the input I provided, and effectively backing me into an invidious corner where [I] was forced to select the less unpleasant option for cancelling my permissions. Furthermore, I do not believe they demonstrated, in any way, how my business was putting my customers at any kind of risk.'

In paragraph 39 of the PR, the Commissioner highlighted that we did not acknowledge your response to our Scope letter in the Decision letter. We would like to apologise for this. Our Decision letter of 29 December 2021 should have referenced your response of 8 October 2021.

Having said this, I would like to clarify that we have responded to your email of 8 October 2021, on 20 October 2021. In my email of 20 October 2021, I thanked you for confirming that you did not have anything further to add and informed you that I had taken note of your comments regarding the Enforcement team which I said I would consider as part of my investigation into your complaint.

What the regulator decided

6. Following the FCA's further investigation it has set out in the June Decision Letter that:

I have partially upheld your complaint. While I have not found evidence that Case Officer X's conduct and behaviour were inappropriate, I have partially upheld the complaint due to the lack of clear explanations from TCT and, earlier, Supervision.

As I explain further below, to provide better customer service I believe there were points where the FCA's position could have been more clearly explained so that you understood the justifications you provided for not having yet commenced regulated business were not considered sufficient by the FCA.

Why you are unhappy with the regulator's decision

7. On 19 January 2022 you wrote to me asking me to review your complaint.
8. In your complaint to me you have questioned whether the use of a department within the FCA is the most appropriate choice to review a complaint against one of their fellow departments' (the Enforcement Team) behaviour. (Element One)
9. You have also set out that you want to challenge the FCA's decision and that you would like me to review your rejected complaint and the validity of the

FCA's dismissal thereof. In your complaint email to me dated 19 January 2022, you said:

I was disappointed, but not surprised, when her response to my complaint reached me (on 29th December 2021) in which she rejected my complaint with what I believe was a superficial and - in my view - parochial commentary on why she upheld the Enforcement Team's approach and behaviour. Large chunks of my input, both to the Enforcement Team and herself, were sandwiched with her terse comments in which she indicated that standard FCA procedures and protocols had been followed - a seemingly inviolate paradigm. She palpably failed to indicate why she believed my rationale and input (on which the Enforcement Team barely commented) were insufficient to persuade her that their attitude and behaviour were, in any way, debatable/questionable. Effectively it read, to me, as a exonerating 'whitewash' of her fellow department and their members; this approach only served to reinforce my feelings of frustration and disillusionment in Complaint Investigator A's approach. (Element Two)

10. You have also set out that you had found your experience with the FCA was 'unedifying, frustrating, incredibly slow and painful to endure.'

You have advised that the complaints team offered you a £50 payment in recognition for the tardiness of the processing of your complaint which you have accepted. You have expressed that, '£50 does not begin to address your feelings of annoyance, frustration and irritation resulting from this unpleasant farrago'. (Element Three)

11. In your email to my office dated 13 June 2022 you expressed that the FCA's further decision letter had not resolved your complaint you said you were:

.... categorically not satisfied with the further 'Decision Letter' as this has not resolved my complaint. Case office X's extended 16-page follow-up appears to utilise the opportunity to address all the key issues

the Commissioner has raised in her preliminary report, none of which have changed my view on the handling of this matter.

My analysis

12. Firstly, I want to set out that I am pleased that the FCA accepted my recommendation from my preliminary report and investigated the missing element of your complaint. The June Decision Letter gave a substantial response to the missed element and detailed the missed chain of correspondence. My analysis of both the December and June Decision Letters are set out below.

Element One

13. You questioned whether it was appropriate for the FCA to investigate a complaint about itself. You have suggested that the complaint investigation was not objectively reviewed and was a 'whitewash'.
14. My office has specifically been set up under the complaints scheme to provide complainants with an option to have their complaints reviewed if they are not satisfied with the regulator's own complaints investigations.
15. Accordingly, I do believe it was appropriate for the FCA to conduct an initial internal investigation into any complaint and to try and resolve the complaint. It is common practice in most organisations to have an internal complaints mechanism in place to review complaints before an external body such as an ombudsman or a commissioner like myself becomes involved.
16. As such, I have not upheld this aspect of your complaint.
17. I note that in your response to my preliminary report received on 3 May 2022 you set out that you still felt that any complaints of a procedural nature should be handled by an independent source, however, you stated that you understood that I was unable to uphold your complaint on this issue.

Element Two

18. In reviewing the following elements of your complaint I have considered the complaint email you sent to my office on 19 January 2021 along with the correspondence file that you sent to my office, the FCA's December and June Decision Letters, your official complaint form to the FCA dated 19 July 2021,

and the email to the Enforcement Team dated 18 June 2021, in which you first raised your complaint and was passed onto the Complaints Team. I have also had access to all the information held on file relating to your complaint.

19. I note that in its December Decision Letter to you the FCA separated your complaint into two parts from the details set out in your complaint form which I will deal with in turn. In addition to the two complaint parts that the FCA set out from your complaint form, as set out in my preliminary report I considered that there was an additional part to your complaint that the FCA failed to capture from your complaint form. Following my Preliminary Report, the FCA acknowledged it had failed to address this aspect of your complaint and issued the further June Decision Letter and apologised that you did not feel the December Decision Letter provided a suitable response. I will discuss the June Decision Letter below.

Part One of the FCA December Decision Letter

20. The FCA set out that Part One of your complaint was that you were unhappy that on 28 January 2021 you had been advised to apply to cancel your FCA authorisation by submitting a cancellation form. The Complaints Investigator set out in the decision letter that they had reviewed the correspondence between you and Supervision, and that as part of its ongoing supervisory role it had been identified that your firm had not used its permissions for 5 years. The Complaints Investigator went on to set out that she believed that the FCA position about firms keeping their permissions was made clear to you and went on to quote an extract for the [published article](#). I note that the Supervision Team had directed you to this article on 22 January 2021, but at that time it did not quote the extract directly in its correspondence to you, this was only done in the Complaint Team's December Decision Letter to you.
21. Having reviewed your response to the Supervision Team on 24 January 2022, I can see that you believed you had provided a satisfactory explanation why you had not conducted regulated activities in the 5 year period, and that you also believed that from the information you had provided that you felt it was apparent that your business did not represent 'any risk to prospective clients'. In the same email you also questioned 'whether there was any latitude that could be

considered during these appallingly difficult and uncertain times' and offered to make yourself available to discuss by telephone.

22. From the information available to me, it does not appear that any telephone conversation took place following on from your email, and the next correspondence was an email on 28 January 2021 from the Supervision team referencing your communications with one of the Supervision team and attaching a letter. The letter reiterated its understanding that you were no longer carrying our regulated business and informing you that you must apply to cancel your FCA authorisation. Neither the email or the letter from the Supervision Team acknowledged any of the points you had raised in your email to explain your firm's situation and did not provide an answer to the question you posed.
23. I feel that it is understandable that having read the letter that you may have felt that the Supervision Team had ignored your previous emails given there was no reference to any of its content, and there was just the letter informing you that you must apply to cancel your authorisation.
24. You responded to the FCA's letter of 28 January 2021 by email on 31 January 2021. In this email you set out your understanding of the Authority's Handbook Supp 7.2.2 wording (that the Supervision Team had directed you to read), being that you need to apply for cancellation if you have no current plans to carry out any regulated activities. In your email to the Supervision Team, you set out that it appeared to have completely ignored the fact that you have made it 'abundantly clear that you do have plans to use the Part 4A permissions once the world in general, and the UK in particular, have returned to normal.' You again provided a summary as to why you had not engaged in any regulated activities and why you felt your firm did not pose any risk. I note that in your response on 3 May 2022 to my preliminary report you stated you wanted to give context to the summary I referred to because you were: 'referring to regulated activities as defined by the Supervisions Team rather than the FCA's handbook definition of a regulated activity.'
25. There was then an email exchange between you and a supervisor in the Supervision Team between 2 February 2021 to 8 February 2021. In this exchange the Supervision Team requested a copy of your business plan and

then requested further details about the regulated activities you would be undertaking and the likely timings. You provided a copy of your business plan and provided additional reasoning about the potential timings for your firm commencing regulated activities. In your email dated 5 February 2021, you set out that you felt the Supervision Team's comments in trying to resolve the matter to be unhelpful, and its 'attitude unnecessarily combative and argumentative'. I do not find the email to be combative or argumentative, but I would agree that their emails were not helpful and that they failed to acknowledge in any way the reasons you set out in your emails for your firm's position and continued to request further details about timings which you had already set out you could not guess about.

26. In the December decision Letter the FCA set out that:

Although you may consider that you provided cogent reasons for the situation the Supervision team did not believe these constituted an acceptable explanation.

27. I do not believe that in the correspondence I have seen that the Supervision Team clearly set out that it did not believe your explanations. I question whether you may have felt less frustrated if the Supervision Team had acknowledged your reasons from the outset and explained why it did not find them to be acceptable explanations. Instead, you set out that you felt like you and the Supervision Team were going around in circles as the Supervision Team failed to directly address any of the points you made.

28. I acknowledge that in your response to my preliminary report you set out that you felt I had interpreted your comments significantly more neutrally than you actually felt.

29. The FCA have acknowledged in its June Decision Letter that following its further investigation, that it felt that Supervision may have missed opportunities in its correspondence with you where it could have provided you with fuller details about the FCA rules and requirements.

30. I am happy that the FCA have acknowledged the level of Supervision's dealings with you were somewhat lacking and that a better approach may have improved your understanding at that time. I note in its June Decision Letter that the

Complaint Investigator set out that in their view it would have been 'helpful for Supervision to make clear to you whether your explanation about what your firm's regulated activities would consist of was sufficient for their purposes, and whether they matched the permission your firm had been granted authorisation for in 2015.'

31. Later in the June Decision Letter it was noted that 'it would have been helpful for Supervision in certain instances to have engaged with the reason you had provided and offered clearer explanations so that you understood the 'Use it or Lose it' initiative and how it applied to your business. The explanation provided by the Complaints Investigator in the June Decision Letter was detailed and clear and offered insight why the 'Use it or Lose it' initiative is important to provide consumers with confidence in the financial service register but also how it was relevant in your firm's circumstances. I believe that had such a helpful and clear explanation been provided to you at the early Supervision stage it would have provided you with context to at least understand why the FCA was contacting your firm and why it required confirmation that you were using your regulated permissions.
32. Whilst the Complaints Investigator has acknowledged that Supervision failed to provide this insight to you, I am pleased to note that the Complaints Investigator has noted that your complaint has resulted in recommendations to improve the process of both Supervision and Enforcement in regard to the 'Use it or Lose it provision'. I would welcome any updates to processes around this that the FCA has made.

Part Two of the FCA decision letters

33. On 8 February 2021, at your request, the Supervision Team escalated your matter to the Enforcement Team.
34. Part Two of your complaint relates to your interactions with the Enforcement Team which commenced on 8 March 2021, when you received an email requesting you to provide further information about the date on which your firm would commence regulatory business and asking you to explain how the pandemic and Brexit had impacted your business. This email was followed up the following day on 9 March 2021 by the case officer in the Threshold

Conditions Team (part of the Enforcement Team) who wrote to provide some context to the email you received the previous day. There then followed a chain of communication between you and Case Officer X which I consider to be at the heart of this element of your complaint.

35. In your complaint to me you set out that when you received the response to your complaint you considered that the rejection of your complaint was 'a superficial and parochial' commentary on why the FCA complaint investigator upheld the Enforcement Team's approach and behaviour. You felt that:

Large chunks of my input, both to the Enforcement Team and herself, were sandwiched with her terse comments in which she indicated that standard FCA procedures and protocols had been followed - a seemingly inviolate paradigm. She palpably failed to indicate why she believed my rationale and input (on which the Enforcement Team barely commented) were insufficient to persuade her that their attitude and behaviour were, in any way, debatable/questionable.

36. Following my preliminary report in which I set out that the Complaint Team had failed to address an element of your complaint and in which I recommended that it should investigate and provide you with a new decision letter to address the alleged misconduct of Case Officer X, I am pleased that the FCA accepted this recommendation and issued the June Decision Letter to you. I note that you were unhappy that the June decision letter was issued two weeks after the comments on my preliminary report were due. The FCA did in fact requested a short extension of time to conduct this investigation which I considered was reasonable and would ensure that a thorough investigation was conducted. I apologise that the short extension period was not relayed to you. The below analysis will look at the key aspects of Part Two of the FCA's decision letters.
37. In my preliminary report, I set out that having reviewed the December Decision Letter, I understand why you have been left feeling that it was 'superficial' and 'parochial.' I noted the investigations and findings of Complaint Investigator A were very brief stating that this was the process followed by enforcement and did not believe that your firm was treated any differently from any other firm. I expressed my disappointment that it lacked any informative detail to help you

understand the situation and to understand why the information you had provided to Supervision was insufficient. I set out that I believe that the FCA can use its decision letters to help complainants, especially small firm complainants, better understand circumstances and to better inform and educate them about the requirements and regulatory environment that they operate in. As you have set out it has been a difficult time over the past couple of years with the pandemic and Brexit changing the regulatory environment and I believe this would have been a particularly challenging time for a start-up company like yours.

38. In your response to my preliminary report on 3 May 2022, you said that the lack of feedback from the FCA about the kind of evidence that was required above and beyond that which you had already submitted should be amplified.
39. In its June Decision Letter the FCA itself acknowledged the deficiencies in Supervision's interactions with you and set out that:

In my view, it would have been helpful for supervision to make clear to you whether your explanation of what Firm X's regulated activities will consist of was sufficient for their purposes, and if they matched the permission the firm was granted authorisation for in 2015.

40. In your 3 May 2022 response to my Preliminary report, you set out that you felt intense pressure by Case Officer X this led you to feel like there was no alternative but to liquidate your firm and that this has led to you incurring personal costs of £5,900. I am very sorry to hear that your firm has gone into liquidation.
41. In my preliminary report I set out that the December Decision Letter outlined a detailed timeline for your case and provided a summary of the content of most emails between yourself and the FCA, however I noted that there appeared to be a chain of communications missing from the summary that I considered would be relevant to the understanding of the missing element to your complaint. In its June Decision Letter the FCA provided a detailed summary of this chain of emails, in particular the summary went into details about your call with Case Officer X and your follow up email to the FCA on 20 March 2021.

42. As set out in my Preliminary report from my review of the call notes I can see that it appears that Case Officer X did set out in detail the steps he had taken to evaluate your matter, including speaking to the innovations department to further understand the FCA's specific approach to start ups. The call notes then set out that he explained that having taken everything into account he believed that there was a strong case to pursue cancellation action against your firm and the intention to proceed with an enforcement case. The call notes also set out that Case Officer X explained the process for enforcement action and outlined a resolution option of voluntary cancellation to avoid the enforcement action and that doing so would only result in a change on the Financial services register and that your firm would not be precluded from re-applying for authorisations when your firm was ready to commence regulated activities.
43. You emailed Case Officer X on 20 March 2021, a day after the call took place. I note that from reviewing your email you clearly found the call to be quite confronting and set out that you felt under immediate threat. You also expressed in the email that you were upset that Case Officer X had set out in his email on 16 March 2021 that the call would be a purely informative call, but you felt that when he called, he contradicted this by informing you that the Enforcement Team intended to commence enforcement proceedings having reviewed evidence and consulting with other internal departments. In your 3 May 2022 response to me, you expressed disappointment that my analysis of your email was lacking. I note your feelings on this point but I do consider that I noted the key issues of concern.
44. I note that I did request a call recording of the telephone conversation on 19 March 2021, but the FCA has informed me that the call was not recorded. In your response to my preliminary report you set out that:

I am deeply concerned by the fact that the critical phone call was not recorded and, in my view, this must surely be seen as a highly questionable oversight. I should also reinforce that I found the lengthy procrastination of the Complaints Team both stressful and unhelpful but concur that the key issue, underlying my complaint, is the misconduct and behaviour of Case Officer X.

45. I find it unfortunate that the call was not recorded, because I believe without the relevant call recording there can be no certainty over what was said and yours of the case officer X's recollection of the call and these differ greatly. However, as the call was not available, I have reviewed the information from both you and the FCA (from before and after the call) and considered how it fits with the accounts of the call, and I can appreciate why you were surprised and upset with the content of your call with the case officer. In your email dated 20 March 2021 it appeared you expected the call to be an opportunity to discuss your case and instead you were informed that Case Officer X had essentially finalised his position to proceed with enforcement action. Equally, having read Case Officer X's call notes I do consider that the call was largely in line with what he had set out the call would be in his email on 16 March 2021. Reading the call notes it appears that it was an informative call in which he explained the enforcement procedures and set out the possible resolutions. Whilst the Case Officer was correct to say in his email on 16 March 2021 that enforcement action had not yet commenced against the firm, I can appreciate that this may have led you to feel that you would be able to discuss the matter and that you were instead surprised and upset to be told that the Case Officer had formed the position that he intended to proceed to enforcement action. However, from the call notes it was not clear that the call was or was intended to be combative or argumentative, but I do acknowledge that you clearly felt it was.
46. In the June Decision Letter, the Complaint Investigator set out that in their view 'there appears to have been a misalignment of expectations in respect of what would be discussed on the call on 19 March 2021.' It went onto say that it agreed with my assessment in my preliminary report that it appeared that you interpreted Case Officer X's email differently than was intended, when it said the call would be purely informative. They said, *'given you were clear that you wanted to keep your firm's permission, I can see how it may have led you to believe that the purpose of the call would be to discuss any possible resolutions without having to go down an enforcement route'*.
47. Following from this the Complaint Investigator then proceeded in the June Decision Letter to point to earlier communications that might have alerted to the real purpose behind the call was in fact that the as you had refused to

voluntarily cancel your permissions, your case was then with the Enforcement Team to take the relevant actions in line with the 'Use it or Lose it' initiative. As I outlined above, the Complaints Investigator has accepted that Supervision could have provided more information to help you understand how the 'Use it or Lose it' initiative was applicable to you, so I don't feel that the reference to these communications were necessarily appropriate given the Complaint Investigator has already acknowledged that the help you were given to understand what was noted in Supervision's communications was lacking.

48. At the bottom of page 12 of the June Decision Letter the Complaint Investigator set out the following clear summary of the role of the Threshold Conditions Team (TCT), it set out the following:

The case officer in TCT stated to engage with you on 9 March 2021. As you are aware, firms authorised by the FCA must, at all times, meet Threshold Conditions (TCs) to remain authorised. TCT's role is to assess the relevant evidence and decide if there is a strong case to be referred to Enforcement and hence for a decision on the matter to RDC in this case. As such, at this stage in the process, it was no longer a question of whether your firm was still able to retain its permission. It was a question of whether it was appropriate for the firm to either demonstrate that it was either going to use its permissions in the next 3 months, or voluntarily apply to cancel its permission, or otherwise become subject to enforcement action and referred to RDC. In my opinion, this point could have been made clearer to you, albeit does not invalidate the fact that the correct process was followed.

49. Whilst the Complaints investigator is correct that this does not invalidate that it appears that the correct process was followed, I do think that it affirms the position set out in my preliminary report that the FCA missed the opportunity to provide you with information at relevant times and this was unhelpful and has resulted in an extremely frustrating experience for you which I consider could have been minimised at an early stage. I suspect you would still have been unhappy that you had to cancel your permissions but some knowledge that it was not a personal vendetta or an attempt to bully businesses out of the market

might have made it a less challenging decision you understood that you had to take.

50. In your response to my preliminary report on 3 May 2022, you set out that you strongly believed that it was not sufficient to just recommend to the FCA that they investigate only the alleged misconduct of Case Officer X, but the Complaints team should also be included. You explained that you have found the whole episode a total travesty and one that has caused huge stress and anxiety to you. You also set out that since the liquidation of your business you have also spent the past 5 months seeking full time employment and you outlined that this outstanding issue had not helped. I am pleased that you have now managed to secure a role.
51. As you will see from my analysis in relation to Part Two of the FCA's investigation, I highlighted that I was disappointed that it had originally missed a key aspect of your complaint and I acknowledge that this has resulted in you waiting even longer to achieve a conclusion of your complaint. I have also welcomed the fact that the FCA has carried out its further investigation into this missed element of your complaint and as a result has identified that both Supervision and Enforcement's processes were lacking and could have provided you with more helpful information about the 'Use it or Lose it' initiative and TCT's role, and could have explained why the information you provided in relation to your firm did not meet the necessary requirements to maintain its regulated permissions.
52. I welcome the FCA's recognition that it failed to investigate the allegation in the December Decision letter and its offer of \$50 in recognition of the inconvenience this has caused you.
53. I also welcome that the FCA has apologised for the lack of engagement that you received from both CTC and Supervision. However, I consider and **recommend** that the FCA should also have offered an additional ex gratia payment of £50 for the distress and inconvenience that you have experienced as a result of both Supervision and TCT processes lacking appropriate help and guidance in their dealings with you. Whilst the FCA found that it followed the

relevant processes, you were clearly requesting further guidance and help to understand the issues and it failed to provide this to you.

54. For the above reasons I do agree with the FCA's June Decision Letter to partially uphold your complaint. I agree that Case Officer X was not misleading and that his behaviour was not inappropriate. However, I do consider that overall the FCA's interactions were lacking and resulted in unnecessary frustration that would most likely have been avoided. I know that this decision will disappoint you.

Element Three

55. I have reviewed the file and correspondence on your file. I can see that your complaint form was officially lodged on 19 July 2021 and that the decision letter was issued to you on 29 December 2021. Whilst it is disappointing to see it took over 5 months for the FCA to complete its review of your complaint, the delay in reviewing your complaint is not unique and reflects the experience of a number of other complainants. The FCA has acknowledged that it has experienced some delays in its complaint response times and I am pleased to see that it acknowledged the delay you experienced and has offered an ex-gratia payment of £50 in acknowledgement of the delay you had experienced. I consider that this was a reasonable response to the delay you experienced.

My decision

56. This is my final report about your complaint.

Amerdeep Somal

Complaints Commissioner

27 June 2022