

12 April 2022

Final report by the Complaints Commissioner**Complaint number FCA001669***The complaint*

1. On 2 March 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

Part One

You claim that the FCA failed to give you accurate contact details for Firm X during telephone calls in November and December 2021.

I have reviewed the calls between the Supervision Hub and yourself (as detailed above). During the call on 17 December 2021, you explained that you had already called the telephone number provided by Firm X and had reached a recorded message which directed you to an email address. You confirmed in the call of 14 January 2022 that you had received a response from Firm X regarding your complaint and as you were not happy with the response you were in contact with the Financial Ombudsman Service.

You have alleged the Supervision Hub provided you with inaccurate contact numbers for Firm X. I believe that you were seeking an alternative to the telephone number you had already called and the email you had already used. It is clear from the calls that the lack of access to your funds was causing you distress and you were trying to expedite matters.

During the calls the supervisors provided you with the contact details (telephone and email) on the Financial Services Register for both Firm

X and the principal firm (Firm Y). You called the Supervision Hub to inform the FCA that the telephone numbers did not work, although you did not specify whether the numbers were not in use, or if they did not connect you to Firm X. As the supervisor explained in the call of 30 December 2021 the responsibility to maintain up to date and accurate Register details lies with the firm.

Each time you called the supervisor took note of your concerns (including the potentially incorrect contact numbers) and this information was made available to the relevant supervisory team. The supervisors confirmed this to you during the calls.

During each call the supervisor sought to understand your situation and tried to provide you with support including providing the contact details for Firm X and the principal firm, providing the number for MoneyHelper and ensuring you were aware of the Financial Ombudsman Service.

The information provided by the supervisors was accurate, and for this reason I have not upheld this part of your complaint.

Part Two

You claim the FCA's regulation of Firm X has not been effective and you believe Firm X should be shut down.

During the calls you expressed your frustration that the FCA were wasting taxpayer money and as the FCA were paid for by the tax payer we should be helping you. It may be helpful if I explain the FCA is an independent public body funded entirely by the fees the FCA charge regulated firms. The FCA are accountable to the Treasury, which is responsible for the UK's financial system, and to Parliament.

You stated that Firm X were not following FCA rules and so the FCA should act and close the firm down. However, you did not explain which rules you were referring to but mentioned the following: the need for an effective method of communication; and the firm is required to have more than one telephone number for consumers to use.

I have reviewed the Dispute Resolution rules¹ (DISP) and believe you are referring to DISP 1.3.1 and 1.3.2 as follows:

DISP 1.3.1 Effective and transparent procedures for the reasonable and prompt handling of complaints must be established, implemented and maintained by a respondent.

DISP 1.3.2 - These procedures should: (1) allow complaints to be made by any reasonable means; and (2) recognise complaints as requiring resolution

There is no requirement in DISP for firms to provide more than one telephone number. The rules in DISP relate to the cost and availability of telephone numbers used for complaints. For example, DISP 1.3.1AA states, 'Where a respondent operates a telephone line for the purpose of enabling an eligible complainant to submit a complaint, the complainant must not be bound to pay more than the basic rate when contacting the respondent by telephone'.

I have not seen any evidence to demonstrate that Firm X are not following FCA rules.

During the calls you asked for clarification of which FCA rule required Firm X to take 10 days to release money from an account. The supervisor in the third call of 17 January 2022 explained to you that this was not an FCA requirement but more likely to be an internal policy of Firm X. I agree that this is the most likely answer as there is not an FCA rule which explicitly states a requirement for 10 days.

I can appreciate that you were disappointed that the FCA are not able to intervene in your specific complaint or provide you with individual support. Your frustration extended to your belief that Firm X were not dealing with your complaint according to the relevant rules. Although you may equate this to ineffective regulation of Firm X by the FCA, I have not seen any evidence that the FCA has allowed Firm X to act incorrectly.

You stated a number of times that you believed the FCA should close Firm X due to your experiences with the firm, and other reports in the press and online.

The sharing of confidential information about firms is restricted by law under FSMA. The FCA and Prudential Regulation Authority (PRA) have “gateways” that allows disclosure of confidential information to certain third parties in specific circumstances. Disclosure other than in accordance with these provisions is a criminal offence.

This means that due to FSMA, the FCA cannot give you information about any discussions with the firm because it would contravene Section 348 of FSMA and is a criminal offence. Also, any information that is not restricted by FSMA, may be restricted by the FCA’s policy on sharing information. Under this policy, the FCA will not normally disclose whether it has, or has not, taken any action with the firm concerned.

Further information about this is available at:

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

For the reasons given above I have not upheld this part of your complaint.

What the regulator decided

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

I have not upheld your complaint. I appreciate you have experienced a period of time whilst you were unable to access your funds, and this has caused you distress. I hope you have been able to reach resolution.

Unfortunately, the FCA are not able to intervene in individual disputes, and you have engaged with the firm and the Financial Ombudsman Service which is the appropriate route for resolution.

The information provided to you was accurate, even though it may not have helped you with your situation.

There is no evidence the FCA has not effectively supervised Firm X. Although you believe Firm X has breached the FCA rules I have not identified any rule which has been breached.

Why you are unhappy with the regulator's decision

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

Preliminary points (if any)

5. This Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, individual firms [or against the Financial Ombudsman Service (FOS)], nor is it a redress service for individual consumer complaints. The Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separated from the FCA.
6. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates for the purpose of considering whether or not regulatory action is justified, rather than whether or not the individual requires redress. The fact that a firm may have done something which justifies redress does not automatically mean that regulatory action is justified – that would depend upon the scale of the problem, and the risk of recurrence.

My analysis

7. You were unable to access your funds that were held with Firm X as they froze your account. You tried to contact them by telephone but reached an answerphone service advising you to email. You contacted the FCA several times as you were unhappy you couldn't get through to Firm X on the phone number provided.
8. When calling the FCA you advised the FCA's regulation of Firm X was not effective and you wanted Firm X closed down.
9. Having reviewed the FCA file, I agree with the FCA investigator. The FCA tried to assist you when you called about Firm X, providing you with the contact number on the FCA register (albeit the telephone number was invalid as Firm X had not updated the register). The FCA also informed you to refer your

complaint to the FOS as your complaint did not fall within the Complaints Scheme, I can see from the file notes you have done this.

10. The regulator welcomes information from people who report concerns. However, as you were told, 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.
11. 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 (or has not) behaved reasonably – but I am unable to give further details. 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.
12. In your case, 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 about the firm, was reasonable in the circumstances. I recognise that there's a difficult balance to be struck between protecting confidential information to enable us to do our job and encourage potential informants, and the need to give consumers sufficient information and confidence to judge whether or not the regulatory system is operating effectively.

My decision

13. For the reasons set out above, I am unable to uphold your complaint.

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Complaints Commissioner

12 April 2022