

10 August 2022

Final report by the Complaints Commissioner**Complaint number FCA001690***The complaint*

1. On 4 April 2022 you asked me to investigate a complaint about the FCA

What the complaint is about

2. The FCA summarised your complaint as follows:

The Part One

You are unhappy that Firm X has acted in the way that it has, by selling your positions against your will and costing you significant money.

Part Two

You are unhappy that the FCA's rules allow Firm X to act in this way. You say that if such rules exist, then these are clearly contrary to consumer interest and that the FCA has clearly erred in permitting such conduct.

Part Three

You are unhappy because you say that the FCA has failed to exercise proper oversight of Firm X because the FCA should not have allowed Firm X to act in this way.

Part Four

You are unhappy because you sent a number of emails to our consumer queries mailbox, but you feel your concerns were being ignored and not properly attended to.

What the regulator decided

3. The FCA excluded Part One of your complaint under paragraph 1.1 of the Complaints Scheme. This is because it is not within the FCA's remit to investigate complaints against the firms it regulates. The Financial Ombudsman Service (FOS) is the statutory dispute-resolution scheme set up by Parliament under the Financial Services and Markets Act 2000 (FSMA) to resolve individual complaints between regulated firms and consumers.
4. The FCA did not investigate Part Two of your complaint. It explained that this is because your complaint relates to the performance of the regulators' legislative functions as defined in the Financial Services Act 2012 (including making rules and issuing codes and general guidance).
5. The FCA did not uphold Part Three and Four of your complaint.

Why you are unhappy with the regulator's decision

6. You have referred your complaint to me. I summarise below the main points you allege in your emails:
 - a. You allege Firm X said it gave you six weeks to comply with its money laundering policy but that this was not true.
 - b. You say the FCA and the Financial Ombudsman Service (FOS) has ignored this allegation in its response to your complaint. You therefore do not think the FOS or the FCA are fit for purpose. You have mentioned you are unhappy with the FOS decision on other allegations you made about the firm treating you unfairly.
 - c. You allege Firm X has been fraudulent in the way it has handled the sale of your shares.

Preliminary points (if any)

7. Under paragraph 3.4 of the Complaints Scheme to which both the regulators and I operate to, complaints about the FOS are excluded. Therefore, I will not be able to review any of your complaints about the FOS.
8. My report will cover only those matters you have raised with me about the FCA where these are eligible under the Complaints Scheme.

9. The FCA issued its decision letter to you on 25 March 2022. You have referred your complaint to me raising new allegations about Firm X since that date. Usually, it is better for the regulator to investigate any new allegations in the first instance before I review them. In this case, I will not be referring these allegations to the FCA or reviewing them for the reasons I give below.

My analysis

10. The background to your complaint is that you held a trading account with Firm X and that within your account you held a portfolio of shares. I understand that on 9 August 2021, Firm X emailed you and requested proof of the source of your funds. It explained to you that if you do not provide this information for anti-money laundering (AML) purposes then, in accordance with their terms and conditions, Firm X would sell your positions and close your account.
11. You have explained you considered this to be a 'threat' from the firm and engaged in correspondence with the firm to raise a complaint.
12. This correspondence between you and the firm ensued until 24 August 2021, when I understand that Firm X started to sell all your shares and close your positions as it felt you had not complied with its request to provide the necessary proof of source of funds. You are very unhappy with Firm X for doing this and you say that this has caused a crystallised loss to you as you did not want to sell the shares at the time they were sold.
13. I understand that you made a complaint to the FOS and that they have not upheld your complaint.
14. You have referred your complaint to me and allege that you were never in fact given six weeks by the firm to comply with their request, and that you never refused to provide the source of funds and were willing to do so, and you then go on to complain about what you felt were irregularities connected with the sale of your share, the latter being matters you did not raise in your original complaint to the FCA.
15. In my view, the FCA correctly explained to you in its decision letter that:
 - a. The Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs) require firms to

carry out Customer Due Diligence (CDD) on customers in certain circumstances. The intensity of the CDD checks conducted by a firm on a customer varies according to the money laundering risk profile a firm attaches to a customer, and in higher risk situations more intense checks are required. Where more intensive checks are required in higher risk cases, Enhanced Due Diligence (EDD) checks are conducted. Under the MLRs, firms must (as part of CDD) identify the customer and they must also obtain information to establish the nature and purpose of the business relationship or intended transactions. The MLRs mandate certain steps that firms must take and one of these is, in certain circumstances, for the source of the customer's funds (SOF) and source of wealth (SOW) to be established.

- b. The FCA does not involve itself in individual disputes between a firm and a consumer. The FCA confirmed that your concerns regarding Firm X conduct were shared by the FCA with the relevant part of the FCA's Supervision Department. However, it cannot discuss with you what action it may, or may not, have taken in respect of the information being shared owing to confidentiality obligations that fall upon the FCA.
16. The FCA does have a statutory duty to secure an appropriate degree of protection for consumers. It does so by regulating the financial industry through the setting of standards which firms must meet, and by taking enforcement action where that is justified. It does not investigate individuals' complaints against the firms it regulates as that is the role of the FOS.
17. This Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, individuals or the 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.
18. The substance of your complaint is about your personal dispute with Firm X. I am satisfied that the FCA has given your concerns proper consideration and it is also the case that it cannot tell you what actions it may or may not take as a

result of your allegations. It has however, explained to you that Firm X is not breaking any rules by asking you for proof of source of funds.

19. Your allegations about how the Firm dealt with your account, and the allegations you make about its interactions with you regarding your account both before and after the FCA issued its decision letter, are matters which are within the remit of the FOS and that is the correct organisation to deal with your complaint. For this reason, I do not uphold your complaint, and I suggest you raise any further concerns about Firm X's closure of your account with the FOS directly, as such matters are excluded under the Complaints Scheme.

My decision

20. I have not upheld your complaints for the reasons stated above. You have provided a detailed commentary in response to my preliminary report and repeated your concerns about the Firm X and how you allege it has treated you. I have considered carefully all your points, however, these do not change my overall conclusions about your complaint for the reasons given. I realise that my decision is likely to be a considerable disappointment to you but I hope you will understand how I have reached it.

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Complaints Commissioner

10 August 2022