

16 May 2022

Final report by the Complaints Commissioner**Complaint number FCA001693***The complaint*

1. On 28 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 have explained that you are involved in a conflict with the FCA, this has necessitated Witness Statements to be made by FCA employees. You are unhappy with Witness Statement made by an Associate in the Proceeds of Crime Team on 23 September 2020.

You want to complain that the Associate made a false statement in order to deceive the Court.

Part Two

You want to complain that the FCA is engaging and involved with Firm X which is a firm that you state is of ill repute. You state the FCA is engaging with them in order to achieve certain “very highly suspicious and dubious objectives”.

What the regulator decided

3. The FCA said it would not investigate your complaints. It explained that with respect to Part One, it considers that under Paragraph 3.6 of the Complaints Scheme it will not investigate complaints that it reasonably considers could have been, or would be, more appropriately dealt with in another way.

It explained that as your complaint relates to a Witness Statement made by an Associate, it considers that to be more appropriately dealt with by instituting

legal proceedings. This is because the Complaints Scheme is not the correct place to challenge Witness Statements. Legal proceedings will enable you to challenge the credibility of the Witness Statement.

4. With respect to Part Two, the FCA said that Paragraph 3.2 of the Complaints Scheme explains that a complaint “can be made by anyone who is directly affected by the way in which the regulators have carried out their functions, or anyone acting directly on such a person’s behalf provided that the complaint meets the requirements of the Scheme. To be eligible to make a complaint under the Scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators’ action or inaction”.
5. Reviewing the information, you have provided in your letter dated 18 February 2022 it isn’t clear how you have been directly affected by the FCA engaging with Firm X or the inconvenience, distress or loss it would have caused to you as a consequence.

Why you are unhappy with the regulator’s decision

6. You are not happy with the FCA’s decision and have said to me that the burden should not be on the individual to institute legal proceedings in order to obtain redress, and that there is alarming information about Firm X on the internet so it was inappropriate for the FCA to use this firm.

Preliminary points (if any)

7. I should start by saying that under the Complaints Scheme, paragraph 6 provides as follows;
 - 6.15 In the investigation of a complaint by either the relevant regulator(s) or the Complaints Commissioner, any finding of fact of:
 - a) a court of competent jurisdiction (whether in the UK or elsewhere);
 - b) the Upper Tribunal; or
 - c) any other tribunal established by legislative authority (whether in the United Kingdom or elsewhere);

d) any independent tribunal charged with responsibility for hearing a final appeal from the regulatory decisions of the regulators;

which has not been set aside on appeal or otherwise, shall be conclusive evidence of the facts so found, and any decision of that court or tribunal shall be conclusive.

6.16 Any findings of fact or decisions of courts or tribunals not covered by paragraph 6.15 will carry such weight as the regulators or the Complaints Commissioner considers appropriate in the circumstances.

My analysis

8. In your complaint to the FCA you explain that the background to your complaint is that 'on 23 September 2020 the [FCA associate] made a Witness Statement in support of an application by the FCA for the appointment of a Management Receiver against me. In support of the application, the associate had mentioned the following:

I invite the Court to make the Order of Appointment in the terms set out in the draft order and to appoint [Firm X] to act as the Management Receiver". [Para 132]

Finally, the FCA invites the Court to exercise its discretion under Rule 33.60 of the Criminal Procedure Rules not to order that the Receiver give security. X is a reputable and experienced professional employed by a long-standing, accounting and advisory business who regularly undertakes such appointments..... In light of these matter-s and the limited nature of the Receivership, the FCA submits the Court can properly dispense with such a condition of appointment ". [Para 136]

9. For the above reasons, I am writing first of all, to complain that [the associate] made a false statement in order to deceive the Court and secondly, that the FCA is engaging and involved with a firm of ill- repute in order to achieve certain very highly suspicious or dubious objectives'.
10. I appreciate you are unhappy with your interactions with the FCA, but I have to agree with the FCA that your complaint can not be reviewed under the Complaint Scheme. You were engaged in legal proceedings with the FCA which

were dealt with by the Court. Your concerns about matters which occurred during these legal proceedings are a matter for the Court to determine and not for the Complaints Scheme.

11. In response to my preliminary report you have made representations to me that you were directly affected by the FCA engaging Firm X because of the way it is handling your assets under a Confiscation Order issued by the court. However, this matter is not within my remit and is best dealt with elsewhere, namely by the court which appointed Firm X to act as Receiver.

Amerdeep Somal

Complaints Commissioner

16 May 2022