

27 June 2022

Final report by the Complaints Commissioner**Complaint number FCA001746***The complaint*

1. On 24 May 2022 you asked me to review a complaint about the FCA.

What the complaint is about

2. This complaint is connected to matters you raise in another investigation I undertook on a complaint from you, published on my website here: <https://frccommissioner.org.uk/wp-content/uploads/FCA001530-Issued-15-March-2022.-Published-07-April-2022.pdf>. During that investigation, there were some parts of your complaint which were deferred by the FCA and on which you have now received a response from the FCA which you are not happy with.
3. In particular, you are unhappy with the way the FCA took/or did not take action with respect to firms [K] and [X] (the former featured in my initial investigation; the latter did not).

What the regulator decided

4. The FCA did not uphold your complaint. It explained that it was satisfied that its actions with respect to these firms was appropriate, however, due to confidentiality restrictions it would not be able to tell you what action if any it took with respect of these firms.

Why you are unhappy with the regulator's decision

5. You have said to me 'It simply cannot be good enough for the FCA to say we have looked at it and we have done what we thought appropriate, but we do not need to explain.'. You would like to know what actions the FCA took.

My analysis

6. 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 what action if any the FCA took.
7. 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.
8. Having studied the FCA's records I can say that I am satisfied that the FCA has not ignored the information which you have provided and has given it proper consideration. Unfortunately, I cannot say any more than that, and I recognise that that will be frustrating for you.
9. Based on the information I have seen in this case, I am satisfied that the FCA's complaint response was reasonable in the circumstances and that there is no other confidential material that can be released to you. I realise that this leaves you with concerns and unanswered questions, but I hope you will be reassured

that I have reached this conclusion after independently reviewing the confidential material.

My decision

For the reasons given above, I do not uphold your complaint. I note and understand your frustration that neither the FCA nor I have been able to tell you more about what if any regulatory actions the FCA has undertaken with respect to your concerns, however, I have explained above why this is so.

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Complaints Commissioner

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