

01 September 2022

Final report by the Complaints Commissioner**Complaint number FCA001755***The complaint*

1. You asked me to review a complaint about the FCA on 22 June 2022.

What the complaint is about

2. The FCA summarised your complaint as follows:

My understanding of your complaint is that you believe that the Financial Ombudsman Service (FOS) have not provided you with a response to your Subject Access Request (SAR) and have exceeded the time limit under article 12 of the GDPR Act by not requesting a time extension within one month of your request. You also state that the FOS did not comply to the three-month deadline set under GDPR Article 12(3) to provide the Data Subject with full disclosure to the SAR by 26 April 2022.

To resolve this, you would like a formal investigation into matters over the FOS Data Protection not complying under GDPR laws. You would also like the SAR to be responded to in full disclosure. You have also stated that the FOS should investigate to determine its failings to comply to its regulatory duty in a final complaint response format. You add that the remedy to the complaint should include compensation and rights to take further action if not satisfied with the response.

What the regulator decided

3. The FCA wrote and dated a letter to you on 6 May 2022 but due to human error, did not send this letter to you. You asked my office to intervene, and our queries to the FCA prompted it to email you on 22 June 2022 attaching the decision letter dated 6 May 2022. The FCA apologised to you for its delay.

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4. The FCA explained your complaint was outside of the scope of the Complaints Scheme and would not investigate your complaint. It told you, however that you should complaint to the Data Protection Team at the Financial Ombudsman and have included a link that includes information about how the FOS manage your Subject Access Requests and how to complain.

Why you are unhappy with the regulator's decision

5. You have asked me to review the FCA's decision as you believe the FCA 'FCA have ignored the lawful protocol'. You are also of the view that FOS staff are employees of the FCA and answerable to the FCA.
6. You do not understand how it is possible for the FCA to have taken only three days to answer your complaint: you submitted it on 3 May 2022 and the response was dated 6 May 2022. You allege this means the FCA did not properly consider your complaint.

My analysis

7. The Complaints Scheme is concerned with the actions or inactions of the FCA. It is also important for me to highlight, matters which are excluded from the Scheme which I am unable to investigate. Section 3.4(d) of the Complaints Scheme provides that complaints about the actions or inactions, of the Financial Ombudsman Service, The Financial Services Compensation Scheme or the Money Advice Service are excluded from the scheme
8. I can only look at the actions (or the inactions) of the FCA as part of my investigation. Complaints about the FOS are excluded from the Complaints Scheme.
9. Your primary complaint is about the FOS. The FOS is the legal complaint resolution scheme set up by Parliament under the Financial Services and Markets Act 2000 (FSMA). Its role is to resolve individual complaints between regulated firms and their customers. The FOS is operationally independent from the FCA, which in practice means the FCA has no remit to intervene in the decisions it makes in individual cases, the way it handles subject access requests or any day to day operational matters. In my view, the letter you received from the FCA set out the position correctly and gave some useful advice on what you might do.

10. For the reasons above I do not uphold your complaint.
11. You have expressed concern that your complaint was reviewed in what you allege is a short amount of time. I can assure you the FCA has given your complaint due consideration, and I am generally pleased to see that it is processing complaints more quickly, although this has been marred in your case with a failure to send the response it had created until prompted. Therefore I welcome the FCA's apology to you on this matter and consider it sufficient remedy.

My decision

12. You have accepted that your complaint is not one which I can review, but you are of the view that an apology is not sufficient remedy and would like to be awarded an ex gratia compensation payment in addition to the apology. You have said to me that 'An apology must be followed through with an appropriate monetary compensation for the distress and inconvenience the FCA caused when it did not respond in May'. I am afraid I do not agree with you. The Complaint Scheme provides for an apology and ex gratia compensation as both joint and several remedies. In your case, although the FCA did not send the response it had created to you on 6 May 2022, given you had submitted your complaint on 3 May 2022, I do not consider there was any undue delay when it emailed you on 22 June 2022, and therefore I deem an apology sufficient in your case.

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Complaints Commissioner

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