Complaints Commissioner

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Dear Complainant

Complaint against the Financial Conduct Authority
Reference Number: FCA00224

Thank you for your letter dated 8 March 2017. I have now reviewed the information sent to me by you and the Financial Conduct Authority (FCA), the responses to my preliminary decision of 8 June 2017 and answers to additional questions I asked of the FCA, and am able to write to you.

How the complaints scheme works
Under the complaints scheme, I can review the decisions of the FCA's Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

What we have done since receiving your complaint
I have reviewed all the papers you and the regulator have sent to my office. Both you and the FCA have had the opportunity to comment in response to my preliminary decision. I have carefully considered the points made and make further reference to them below. This is a redacted version of my final decision dated 17 July 2017 to maintain the confidentiality of all relevant parties.

Your complaint
On 23 December 2015, you wrote to the FCA to complain about its regulatory decisions and actions in relation to a Firm and an IFA (hereafter the Firm/IFA), which you said had caused a loss to your client, who is a client of the Firm. Your complaints were made following correspondence with the FCA since May 2014 in which you had requested its assistance in obtaining your client's file from the Firm/IFA and other documents to support your client's legal claim in proceedings brought against the Firm. You said that your client is an elderly woman who was allegedly badly advised to take out a Home Income Plan; the funds released were then invested in a bond from which she has made withdrawals so that now her only asset is subject to a loan that increases.

You complained that the FCA had failed to discharge its obligations, had obstructed your client from obtaining relevant information to recover damages, concealed from her the Firm/IFA's misconduct (when they had a duty to protect her) and thereby caused her loss. You said that the FCA had known of problems concerning the Firm/IFA from 2006 but these had not been notified to clients. The FCA had been investigating the Firm/IFA since 2010 and this had led eventually to an Upper Tribunal decision that upheld the FCA's regulatory actions. You said the FCA should then have served Final Notices against the Firm/IFA and amended its Register and website but had not done so. You made several other criticisms about what you considered to be regulatory failure. These included an allegation of lack of action by the FCA despite knowing, so you allege, that the Firm/IFA had not paid awards made by the Financial Ombudsman Service (FOS), had no Professional Indemnity Insurance

(which is a condition of authorisation), and was still giving advice to existing clients. You also said that the FCA had not publicised a Voluntary Variation of Permission agreed with the Firm/IFA.

You wanted the FCA to acknowledge that it should have provided certain documents to your client and to now provide them. You also sought compensation for your client based on her alleged losses and the FCA's alleged 'bad faith'. In addition, you wanted the FCA to treat your letter of 23 December 2015 both as a complaint and as a pre-action protocol letter for the purposes of the Civil Procedure Rules (CPR).

On 22 January 2016, the FCA wrote to ask you to clarify if your letter was a complaint or a prelude to proceedings against the FCA. It said that it was likely to defer any complaints investigation because the Firm/IFA had appealed against the Upper Tribunal decision and its policy was not to publish Final Notices until proceedings had been concluded. It declined to investigate your complaint about supplying documents as there was a more appropriate forum for this, through the court proceedings between your client and the Firm/IFA. Following further exchanges of correspondence, the FCA wrote to you again on 24 February 2016. It declined to respond to your letter of 23 December 2015 as a pre-action protocol letter. There was further correspondence, notably the FCA to you on 4 April 2016 and 6 July 2016, and your letter to the FCA of 21 June 2016. Taken together, this correspondence sets out the basis on which the FCA said it would conduct a limited investigation under Stage 1 of the Complaints Scheme (the Scheme), as follows:

1)
   a) Allegations about the accuracy and utility of the Financial Services Register
   b) FCA policy not to issue Final Notices until the appeal is concluded
   c) Lack of communication and notification to clients of the Firm/IFA

You were not satisfied with the basis on which the FCA proposed to address your concerns and approached my office. Your letter dated 21 June 2016 with enclosures was received by me only on 25 August 2016, at which point the FCA indicated that its Stage 1 investigation was nearly complete and we advised you to await its outcome. Unfortunately, this had still not been supplied by 12 January 2017 when I wrote to both you and the FCA to say that I was now taking over the investigation. The FCA finally issued its Stage 1 response on 17 January.

The FCA partly upheld complaint 1 a) on the basis that a link on the Register to a Decision Notice was broken. The Complaints Team made some recommendations for improvements to the Register "*to make the existence of disciplinary and regulatory history more obvious in appropriate cases*". Complaint 1 b) was not upheld on the basis that S.390(2) of the Financial Services and Markets Act 2000 (FSMA) means that the FCA cannot give a final notice until the decision is no longer open to review. Complaint 1 c) was not upheld on the basis that the FCA does not normally make public its regulatory investigations.

You remain dissatisfied with this response, and the narrow way in which you consider the FCA scoped your complaint, and have asked me to investigate. In addition to the original complaints you made to the FCA in December 2015, you wish me to consider the points you made to me in your letter dated 21 June 2016 (received on 25 August). These were:

1. The FCA's slow progress in the complaints it did agree to look at
2. The "obstructive and defensive" nature of the FCA's correspondence, including:

   a. Its failure to address points such as the non-disclosure of documents
   b. Its failure to respond to allegations based on the Upper Tribunal findings
   c. Its failure to disclose the files and documents requested
3. The FCA's failure to remove the Firm/IFA from the Register following the Upper Tribunal decision and/or on numerous grounds available since 2006
4. The FCA's refusal to compensate your client

Your letter of 8 March 2017 also asks me to look at the following additional matters:

5. The FCA "cherry-picked" three issues and has refused to investigate or act on most your complaints and has failed to take other regulatory or executive action or respond to your pre-action protocol letter. As a result, my office will now have to carry out a Stage 1 investigation into all matters, which will take longer.
6. The Stage 1 response inaccurately summarises the complaints the FCA agreed to look at, ignoring both your protests about why they are vague and unsatisfactory and concessions made by the FCA about what would be investigated. The FCA's Stage 1 response has been "cobbled together" only after my intervention and is superficial without giving the matters looked at serious attention. In particular:
   i. The Firm/IFA's appeal is hopeless and out of time. The FCA has refused to show it to you and has ignored it in its Stage 1 response.
   ii. The FCA's Register is still inaccurate. The FCA has changed its reasons for not publishing a Final Notice from 'policy' to reliance on FSMA. That reliance is wrong.
   iii. The FCA has ignored the difference between clients and the public, even though it agreed to investigate this. The issue of non-disclosure to the public hasn't been justified by the FCA's response.
7. The overall time taken by the FCA to respond to your complaint.

My position

Under the Scheme, my approach has been to consider, first, whether the FCA Complaints Team acted reasonably in scoping the matters it would investigate as it did and whether the matters that it excluded should also be investigated. I have then reviewed the FCA's Stage 1 investigation, the reasonableness of its response and the effects of any delay.

Scope of the FCA's investigation

I have carefully reviewed papers provided by you and by the FCA, including internal confidential material supplied to me by the FCA that shows how it approached deciding how to scope its investigation. In response to the preliminary decision you have said that my reliance on internal confidential material not seen by the complainant is a breach of natural justice and that this material should be disclosed forthwith. In addition to the correspondence on the complaints file, which you will have seen, the FCA has allowed me access to advice from its General Counsel's Department to which legal privilege attaches and confidential material related to the Firm/IFA. Under the Scheme I have access to this material to conduct an independent review of FCA complaint responses but information received by the FCA that is not otherwise publicly available, has been obtained by the FCA as part of the FCA's functions, and relates to the business or other affairs of any person cannot be disclosed to you or your client due to the confidentiality requirements of s348 of the Financial Services and Markets Act 2000 (FSMA). This is the way that Parliament (rather than my office or the

regulators) has decided that the system should operate. In addition to this, any information that is not restricted by s.348 of FSMA, may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, which is that it cannot disclose whether it has taken action against firms because disclosing that information infringes rights to privacy and could unfairly damage a firm's reputation. I say a bit more about this below.

I am satisfied that it was reasonable for the FCA to exclude the following matters from investigation under the Scheme:

- Disclosure of documents – The FCA's general policy approach is that it does not get involved in individual disputes. Although you consider the FCA failed to show it had exercised its discretion in applying this policy to the specific circumstances of your client's complaint, I am satisfied that its approach was reasonable and one that it was entitled to take. The Financial Ombudsman Service (FOS) exists to cover the substantive issues your client raised about bad advice and financial loss. In addition, the FCA applied paragraph 3.6 of the Scheme on the basis that your client had an alternative forum to obtain the documents as she had issued court proceedings. In my view, it was reasonable for the FCA to refer jurisdiction over this matter to the court.

  In response to my preliminary decision you have said that I have not shown that I understand that there were two complaints relating to different document requests. I do understand this and I am satisfied that the FCA considered the separate requests and their different elements in detail but concluded in all cases that disclosure should only be made by your client invoking the correct procedure under CPR 31.17. As stated above, I consider that this approach was one that the FCA was reasonably entitled to take.

- Your general allegations about effective regulation of the Firm/IFA – The FCA gave three reasons for declining to investigate your allegations of regulatory inaction. It said (a) that it did not want an investigation to run parallel with court proceedings (again applying paragraph 3.6), that (b) in any event it would defer consideration of these matters since the Firm/IFA's appeal from the Upper Tribunal was still pending (applying paragraph 3.7) and (c) it took account of the nature of your allegations about the FCA itself, in which you had alleged 'bad faith' and were seeking substantial compensation for your client, which raised difficult issues of causation. Taken together I consider that this was a reasonable response. I am satisfied that it would have been inappropriate for the FCA to commence investigations while court proceedings and the Firm/IFA's appeal were both pending. Your client's primary cause of action, if any, lies against the Firm/IFA and is best resolved either through the FOS or litigation. Although I do not consider that the amount of compensation being claimed by a complainant should inevitably be a reason for declining to investigate under the Scheme, in my view the causation issues are highly significant in your client's case, and I am satisfied that the FCA was correct to refer to this. I also consider that the FCA was entitled to take the view that any outstanding regulatory issues should be deferred pending the outcome of the Firm/IFA's appeal against the findings of the Upper Tribunal which deals with regulatory actions the FCA has taken so far and which, if implemented, will remove the Firm/IFA's authorisation/approval.

In reaching these conclusions, I have had regard to the overall nature of the UK regulatory regime for financial services and the FCA's responsibilities as a regulator, which include

consumer protection, but are not designed to provide redress to individual consumers of financial advice, a function that is carried out by the FOS and the courts. I have also had regard to the fact that the FCA has discretion over what, if any, regulatory action to pursue.

For completeness, I add that the FCA's decision to decline to respond to the pre-action protocol aspects of your letter of 23 December 2015 was in my view a legal position that it was entitled to take and not one that I consider it appropriate to review under the Scheme.

As I have concluded that the FCA was correct to exclude the matters referred to above, it is not necessary for me to carry out a Stage 1 investigation into those issues. However, because matters have moved on since you first raised your concerns, I have considered whether the FCA's reasons for deferring your complaint about effective regulation still hold.

Court proceedings and the FOS

I asked you to let me know the status of your client's court proceedings. You told me that no further steps have been taken since the service of the Reply and Defence to the Counterclaim and that no formal order for a stay or abandonment has been made nor any directions given. You say that, given the time that has elapsed, it is uncertain whether the High Court would allow matters to proceed, even assuming it can be shown that the Firm had insurance cover at the relevant period. You consider that the FCA is to blame for the lack of clarity about the Firm's insurance position and for failing to ensure that cover was in place.

I also asked you whether your client's complaint has been referred to the FOS and with what result. You told me that a reference was made but did not say whether this was before or after you decided to issue court proceedings. You said that the FOS has now referred you to the Financial Services Compensation Scheme (FSCS) because the Firm is in default but that the FSCS has declined to investigate due to the court proceedings. You have also pointed out that your client's claimed losses exceed the amount that can be awarded by the FSCS.

You consider that the evidence shows that your client has been diligent in pursuing her remedies and seeking compensation. It is not for me to pass judgment on this; however, it appears that her current position is at a stalemate unless and until the court proceedings are formally abandoned and the claim can be pursued with the FSCS. I am not persuaded that the FCA can be held responsible for this situation.

Conclusion of the Firm/IFA's Appeal to the Upper Tribunal

When I issued my preliminary decision, the Court of Appeal had refused permission for the Firm/IFA's appeal against the decision of the Upper Tribunal and the FCA had informed me that its case team was taking steps to issue final notices and update the Financial Services Register. In view of this, and given that the court proceedings are effectively 'stalled', I concluded that there was now nothing to prevent the FCA from considering your allegations that it failed to regulate the Firm/IFA. However, I have since been informed by the FCA that the Firm/IFA has now filed a further application to appeal. The matter is therefore continuing, and the FCA does not think it can publish the final notices at this stage. I return to this below. In relation to the disclosure of this matter, the FCA has said that the fact of the application to reopen the determination of the appeal is not public, and therefore may be subject to s348, but it accepts that we may need to disclose this to you in order to address the point. I remind you of the continuing effect of s348 of FSMA on confidential information as discussed above.

The FCA's response to the complaints it did investigate

In its letters of 4 April and 6 July 2016, the FCA set out the matters it was investigating.

The 4 April letter stated that the Complaints Team was looking at:

> *(a) the way the status of [the Firm/IFA] has been displayed on the Financial Services Register; (b) the FCA's policy not to publish a Final Notice and update the Register until any appeal against an Upper Tribunal decision had been disposed of; and (c) the FCA's public communications relating to [the Firm/IFA] more generally.*
>
> *In relation to (c), please note that our letter of 24 February 2016 states that we will investigate the point raised in paragraph 3.3. of your letter of [23 December 2015: sic] "regarding our public communications more generally relating to [the Firm/IFA] with a particular emphasis on paras. 3.3(a), (h), (k) and (n). To be clear, we did* ***not*** *undertake to investigate* ***all*** *the allegations made in paragraph 3.3 relating to any matter not connected with our general public communications which your client claims was lacking in the circumstances.*

The 6 July letter said:

> *... for the avoidance of doubt, I can confirm that:*
>
> *On issue 1(a), our investigation covers your allegations as to the accuracy and utility of the Financial Services Register. It will not include investigating any complaints about the enforcement activities of the FSA/FCA…*
> *On issue 1(b), the scope of the investigation is as set out in our letter of 4 April and mirrors exactly your position as set out in para 2(b) of your letter of 18 March;*
> *On issue 1(c), we can confirm that our investigation is looking into the issues not only of general public communications but also of the 'non-communication to clients'.*

The FCA's response partly upheld complaint 1a) on the basis that a link on the Register to a Decision Notice was broken. This was fixed and other recommendations were made about the utility of the Register. I welcome these proposals for improvement and I also have some further observations to make.

First, I would like to emphasise how serious a failing it was for the FCA's public register to have a broken link to a Decision Notice about a Firm/IFA. The error meant that the Decision Notice was not in fact publicly accessible from the IFA's register entry for over three years.

In response to the preliminary decision the FCA has said that it considers I have overstated the effects of the broken weblink on those inquiring into the Firm/IFA's regulatory status. It says that although the weblink for the IFA was broken, the Decision Notice for the Firm was available on the Register and both Decision Notices were available elsewhere on the FCA's website and were easily accessible by a web search for the terms 'FCA' and either the IFA or the Firm by name. Although I accept these points, it is nevertheless the case that the FCA has protocols to ensure that links are checked for accuracy. Clearly these were not effective on this occasion, which is unacceptable.

Secondly, the Register currently states that the decision notice is subject to determination by the Tribunal. When expanded the entry states that: THIS DECISION NOTICE HAS BEEN REFERRED TO THE UPPER TRIBUNAL IN ORDER TO DETERMINE THE APPROPRIATE ACTION FOR THE FCA TO TAKE. However, that is not an accurate representation of the current position, which is that the Upper Tribunal has made a determination, which is subject to appeal to the Court of Appeal. I see no reason why the FCA could not make this clear on its Register. That would seem to me to strike a more appropriate balance between the rights of the Firm/IFA and the protection of potential and existing clients. I note that the FCA's recommendations following its investigation include a review of "*the procedure for updating information it has chosen to publish about the status of disciplinary or regulatory history which remains open to review*" and I welcome that. In my view, the FCA might also consider publishing links to Upper Tribunal decisions, given that these are public documents, notwithstanding that they may be subject to appeal, provided that is made clear. The Register could note that the FCA does not issue Final Notices while a matter remains open to review.

I agree with the FCA's decision to partly uphold this aspect of your complaint.

This leads me to issue 1b). Although I consider that the FCA could make the position clearer where an Upper Tribunal decision is subject to appeal, I am satisfied that it is reasonable for it not to issue Final Notices and update the Register until any appeal against an Upper Tribunal decision has been concluded. One of your concerns about this is that at first the FCA told you that this was a policy approach and then changed its mind and said it was due to the provisions of FSMA. You say that a reliance on FSMA is incorrect. In my view that is a matter for legal interpretation that cannot be resolved under the Scheme. Clearly it makes a difference whether the FCA is choosing not to do something or is required not to do it. However, I do not consider the difference is material in this case since in my view it is a reasonable stance for the FCA to take in any event. You comment that the Firm/IFA's appeal is out of time and 'hopeless'. Although it is clearly of concern that so much time has elapsed since the Upper Tribunal decision, I do not consider that this makes a difference to the FCA's overall position.

You also complained that the FCA refused to supply you with copies of the Court of Appeal documents. The FCA's position is that this documentation was not required for the purposes of the matters it was investigating and that they would be made available to me in due course if required. I note that the FCA did provide you with links to the relevant Court of Appeal website. I consider that this was a reasonable stance to take, given your client's lack of standing in the appeal proceedings, despite her obvious interest in their outcome.

For the above reasons, I do not uphold this aspect of your complaint.

In response to issue 1c) the FCA's response dated 17 January 2017 said that:

> *You complain that the FCA failed to make a public communication about the conduct of [the Firm/IFA] before the Decision Notices were published, or to notify the firm's clients. Our investigation focused in particular on those aspects of paragraphs 3.3(a), (h), (k) and (n) of your letter of 23 December 2015 relating to such communication. Those were:*

- *That the FSA (as the FCA was then known) did not notify the firm's clients that it had required the firm to review the suitability of GTEPs or about the conduct of the firm which led to the FCA's Decision Notice;*
- *That the FSA did not notify clients … that a referral of the firm's conduct had been made to the FSA's Enforcement Division;*
- *That the FSA did not notify your client that an independent person had been appointed;*
- *That during the time taken to produce an Enforcement investigation report, the FSA did not notify the firm's clients.*

The FCA did not uphold this aspect of your complaint on the basis that its guidance states that it will "*not normally make public the fact that it is or is not investigating a particular matter*", except in certain circumstances. The letter went on to say that:

> *We explored this with the Enforcement team who confirmed that in the circumstances at the time, particularly having regard to the effect of the Variation of Permission, they would not have considered that there were such exceptional circumstances. The starting point for not making public such matters is based on the fact that firms and approved persons have the right to challenge the Authority's decisions about disciplinary action. It may constitute a serious abuse of process to disclose decisions to investigate to the public before a decision to take regulatory or disciplinary action is made. Although there was no press release by the FCA prior to the publication of the Decision Notices, there was an industry press publication … which discussed the voluntary variation of permission. The article stated that [the IFA] had applied for the variation of permission to ensure the firm was meeting its obligations under the rules relating to treating its customers fairly.*

In looking at this aspect of your complaint, I have considered whether the FCA's response dealt with the matters that it said it would and whether it was reasonable for the Complaints Team to restrict its investigations to those matters.

I am satisfied that the FCA response referred to the paragraphs in paragraph 3.3 of your letter of 23 December 2015 that it said it would consider in earlier correspondence. These related primarily to issues around the FCA's failure to inform the Firm/IFA's clients of its regulatory actions. I note your view that the FCA has ignored the difference between public communication and communication to clients despite saying that it would look at both. My understanding is that the FCA does contact clients of a firm in some circumstances but not where a regulatory outcome is uncertain or may be challenged successfully. The FCA's stance is based on issues of procedural fairness to regulated individuals and firms, although I appreciate you feel this is unfair to consumers. I have made points above about the FCA's position in the UK regulatory regime. However, I do consider that, to make its position clearer, the FCA should have explained to you in what circumstances it will or will not contact clients.

In addition to the aspects identified by the FCA, paragraph 3.3 of your letter dated 23 December 2015 referred to several other matters arising from the findings of the Upper Tribunal. I am satisfied that these matters all relate to the issue of effective regulation, which the FCA specifically excluded from its investigation relying on paragraphs 3.6 and 3.7 of the Scheme. I have explained above why I think that was a reasonable approach to take at the time in all the circumstances. In my preliminary decision I suggested that the FCA now

conducts a complaints investigation into these matters, including your allegations of lack of action by the FCA despite knowing that the Firm/IFA had not paid awards made by the Financial Ombudsman Service (FOS), that the FCA allowed the Firm/IFA to continue without Professional Indemnity Insurance (PII) cover for nearly seven years, and that the Voluntary Variation of Permission (VVOP) entered into was not publicised and did not resolve the lack of PII for existing clients but only for new business underwritten by a third party. I considered the latter point of particular relevance given that PII is a condition of authorisation and in view of your assertion that the Firm/IFA was still giving advice to existing clients.

However, in view of the responses that I have received from both you and the FCA in response to my preliminary decision, I have now concluded that the reasons the FCA gave for declining to investigate are still relevant and that a complaints investigation into these regulatory matters would not be appropriate. This is not only because the Firm/IFA has served further notice of appeal to the Court of Appeal and the FCA does not think it can publish the final notices and update the Register at this time. It is also clear from your response that you continue to allege bad faith by the FCA and that your claim for substantial compensation remains, despite what you accept are 'difficult' causation issues. For that reason, I am of the view that an investigation of those issues under the Complaints Scheme would not be fruitful. Although there are some general issues about the effectiveness of the regime arising from this case which the FCA might reflect upon, those go beyond this complaint and this Scheme.

Delay

You consider that the FCA's correspondence was obstructive from your first contact in 2014. You first complained to the FCA in December 2015 but your complaint was not fully scoped until 6 July 2016 following extensive correspondence. I am satisfied that during this period there was active and extensive correspondence between you and the FCA while the FCA determined and set out the parameters of its investigation. I do not consider this to be a period of delay, given the nature and volume of the material and arguments you were presenting to the FCA. The FCA Complaints Team was also actively seeking and receiving internal responses, evidence and information about your complaints during this time. A draft response was in train in early September 2016; this was confirmed to you and to my office. I am satisfied that at this stage the FCA genuinely expected to issue its response within the timescale indicated. Around this time the staff member handling your complaint moved to another team and the file was passed to a new case handler. The FCA carried out further internal quality checks and decided that more work was required before finalising the response. This was communicated to you on 22 November 2016 and the second response was sent for further checks on 29 November. However, it wasn't until 17 January 2017, after further intervention by my office, that the response was eventually issued.

It is clearly right that the FCA should carry out internal quality checks to ensure that its complaint responses meet the required standards and accurately reflect the FCA's position. However, on this occasion there were avoidable delays between September 2016 and January 2017 in part because of concerns about the quality of the initial work. I note that the FCA's complaint response to you states that "*The fact that a decision was not given to you some months ago is regrettable and falls well short of our expectations of our own performance. Steps are being taken to prevent the recurrence of that delay in future cases*". I have considered whether that is an acceptable response or whether it would be appropriate for me

to recommend that a small payment is made. I have concluded that this would be appropriate, particularly in view of the FCA's notable failure to keep you informed of progress, even after interventions by my office. I **recommend** that the FCA offers to pay your client the sum of £100 in recognition of the distress and inconvenience that has been caused to her by its delay in handling your complaint.

Conclusion

In conclusion, for the reasons set out above, I have not upheld your substantive complaint. As stated above I am not now suggesting that the FCA investigates the regulatory matters you raised. However, I note that the FCA, in response to my preliminary decision, has said that if you, on your client's behalf, do seek an examination of the FCA's regulatory performance, then it would not refuse to carry it out. However, although such an investigation would examine whether the FCA has properly supervised this particular Firm/IFA it would not achieve for your client her goal of securing the significant compensation she is seeking. The FCA believes that it has more effective means by which to assess the performance of its supervisory functions.

I have **suggested** that the FCA should consider publishing links to Upper Tribunal decisions, given that these are public documents, notwithstanding that they may be subject to appeal, provided that is made clear. The Register could note that the FCA does not issue Final Notices while a matter remains open to review. I am pleased to note that in response to my preliminary decision the FCA has said that it has amended Enforcement's Practice Manual to implement this suggestion as follows: where it has put a Decision Notice on the Register, the Register is updated to reflect the issue of the Upper Tribunal's relevant judgment and, if relevant, the fact that the matter is before the Court of Appeal, together with a statement, in the latter case, that the FCA does not issue a relevant Final Notice when there is a live appeal against a Tribunal decision. I consider this to be a helpful development.

In addition, I have observed that the FCA should have explained to you in what circumstances it will or will not contact clients to make its position clearer. In response to my preliminary decision you have said that your client looks forward to the FCA's explanation of the circumstances in which clients as opposed to the public will be informed (of regulatory action). For the avoidance of doubt, I have not recommended or suggested that the FCA should now do so as I have set out my understanding of the position in this decision.

However, to assist you, I have now asked the FCA for further clarification on this point and it has responded as follows: *"Enforcement will not inform the clients of a firm of the fact(s) of our regulatory action against the firm, a referral to Enforcement about the firm or an Enforcement investigation into the firm, if we do not otherwise publicise that or those fact(s) (on which, see Chapter 6 of the Enforcement Guide*), unless we need to do so to seek evidence or other information from them in the course of such an investigation. We are mindful in this context of the requirements of section 391 of FSMA and Article 8 of the ECHR".* *https://www.handbook.fca.org.uk/handbook/document/EG_Full_20140401.pdf

I am satisfied that this is consistent with the FCA's legal and regulatory responsibilities and its general policy and approach as discussed above.

I have upheld your complaint of delay. I recommend that the FCA offers to pay your client the sum of £100 in recognition of the distress and inconvenience that has been caused to her by its delay in handling your complaint.

I realise that you will be disappointed by my decision overall but I hope you will understand how I have reached it.

Yours sincerely

Antony Townsend
Complaints Commissioner